BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :24.06.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.11189 of 2016
and
WMP(MD)No.8602 of 2016

M/s.Dhivya
Rep. Through its Partner
V.Poongothai .. Petitioner

vs.

1.The Madurai Municipal Corporation,
Rep. Through its Commissioner,
Arignar Anna Malaigai,
Madurai.

2.M/s.Commondom Investment Private Limited,
Through its Managing Representative,
Sri K.S.Ravindranath .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records in relation to the demand cum distraint proceedings, dated 10.06.2016 of the first respondent in relation to the Property Tax Assessment No.56262 and quash the same.

For Petitioner :Mr.A.R.M.Ramesh
For R-1 :Mr.R.Murali

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ORDER

The petitioner Mrs.Divya claims to be the occupant of the property in Door No.21, Town Hall Road, Madurai Town, has come to this Court challenging the impugned distraint notice, dated 10.06.2016 addressed to the owners of the property namely Venugopal and Chidambaranathan, calling upon them to pay the arrears of property tax from 2001-2002 to 2016-2017, a sum of Rs.18,00,000/-, on the ground that the petitioner is the tenant of the property and she has been in continuous occupation, but all of a sudden, this distraint notice has been issued informing that failure to pay the entire arrears of property tax, she would be forcibly vacated from the property in question.

2.Learned counsel appearing for the petitioner assailing the impugned order stated that the petitioner is occupying the property only as a tenant, hence, she has no obligation whatsoever to pay the property tax to the respondent corporation. Further, being the tenant, she has entered into an agreement with the landlord, therefore, if the property tax payable to the respondent corporation, has been left unpaid from 2001-2002 to 2016-2017, it is for the respondent corporation to proceed only against the landlord. Without resorting to that method, which is known to law, the present impugned notice ought not to have been addressed to the petitioner calling upon her to comply with the orders, within three days, failing which she would be vacated forcibly.

3. Adding further taking reliance from the judgment and decree passed by the Additional District Munsif Court, Madurai in O.S.No.776 of 2004, dated 20.12.2013, he pleaded that the issue with regard to the validity of the revised property tax, it was rightly held that although the owner of the property is entitled to question the validity of the revised tax, in certain special circumstances, if any distraint notice is issued , the occupant is entitled to seek remedy and hence, the suit was also decided in favour of the petitioner. As against that, there is no appeal filed by the Corporation. Once again the present distraint notice is issued and hence, the petitioner is entitled to challenge the same before this Court.

4. But, this Court does not find any merit or justification in this Writ Petition. The reason is that the distraint notice impugned herein has been issued only to the owner of the property. Therefore, the owner of the property alone is entitled to question the validity of the notice, but not the tenant or occupant of the premises. Surprisingly, the present petitioner, who is not the owner of the property approached the civil Court in O.S.No.776 of 2004 without any locus standi, to my surprise, the Civil Court had wrongly entertained the suit filed by the occupant. Consequently, the Civil Court has accepted the suit filed by the petitioner as an occupant on the ground of immediate danger caused to the plaintiff. But, at least from the date of passing of the decree and judgment namely 20.12.2013, to show her bonafide, the petitioner neither appears to have paid property tax nor has taken any useful measures/steps to clear the property tax. Resultantly,huge arrears have been accumulated. Therefore, this Court is not inclined to entertain the Writ Petition.

5. Thirdly, it was also argued that as against the distraint notice, the petitioner is not entitled to prefer an appeal. It is clear, under Rule 21 of the Madurai City Municipal Corporation Act, 1971 that no person, who fails to file the return within the notified time under Rule 4 in Part II, shall be entitled to appeal against any assessment order made by the Commissioner.

6. Therefore, it is very clear that when the respondent corporation has issued distraint notice calling upon the owner of the property, the petitioner being an occupant in law, cannot either come to this Court or to go for an appeal. While so, it is not known why similar distraint proceedings issued in the year 2013, which was challenged before the civil Court, has not been taken care of both by the petitioner as an occupant of the property or by the owner of the property. Therefore, on the ground that the petitioner has no locus standi to challenge the impugned distraint notice, which has been issued to the owner of the property, this Court is not inclined to entertain this Writ Petition.

7. At this point of time, the learned counsel for the petitioner

sought permission of this Court to withdraw the writ petition with liberty to pay monthly a sum of Rs.2,00,000/- only now onwards. But, this Court is not inclined to accept this request, because, a huge arrears are pending .

8. In the result, the Writ Petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Malaigai,
Madurai.

+1CC to M/S. A.R.M. Ramesh, Advocate, SR.No.32896
+1CC to M/S.R.Murali, Advocate, SR.No. 33258

W.P.(MD)No.11189 of 2016
24.06.2016

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